

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In the Matter of:

St. James Incorporated,
f/k/a ASC Incorporated,
a Michigan corporation,

Debtor.

Case No. 07-48680

Chapter 11 Proceeding

Hon. Thomas J. Tucker

**ORDER *DENYING* REORGANIZED DEBTOR'S EX PARTE MOTION
FILED OCTOBER 6, 2008 (DOCKET # 1296)**

This case is before the Court on the Reorganized Debtor's "Ex Parte Motion to Limit The Notice Requirements And Schedule Hearings On The Debtor's Applications For Approval Of Preference Settlements With Jerz Machine Tool Corporation And Modineer Company" (Docket No. 1296, the "Ex Parte Motion"). The Court, having reviewed the Ex Parte Motion, concludes that the Ex Parte Motion has not demonstrated good cause to grant any of the relief requested (expedited hearing; or approving settlements without notice; or limiting notice to ECF participants). Accordingly, the Court will deny the Ex Parte Motion, and require Debtor to take the actions required by this Order, below.

The Court makes the following observations, after reading the Ex Parte Motion, and in particular paragraph 7 of that motion.

Under section 12.5 of the confirmed plan (Docket # 1185), the Reorganized Debtor's right to settle preference actions without notice applies only to "all Preference Actions," meaning preference actions that were not "settled before the Confirmation Date." Under the confirmed plan, only preference actions "that have already been settled or will be settled before the Confirmation Date" are excluded from the definition of "Preference Actions." (Plan, section

1.2.55). Arguably, at least, the Modineer Company and Jerz Machine Tool Company preference claims were **not** “settled before the Confirmation Date” (which was September 17, 2008, the day the confirmation order was entered, see Plan, section 1.1.19). Debtor’s motions to approve the settlements were filed on September 15, 2008, but the Court had not approved either settlement by the time the confirmation order was entered two days later (and the Court still has not approved either settlement). As a result, these two preference claims might **not** be excluded from the definition of “Preference Actions,” *i.e.*, arguably, they are included in the “Preference Actions” as that term is defined by the confirmed plan.

If, on the one hand, the Modineer and Jerz preference claims **are** “Preference Actions,” then the Reorganized Debtor may settle them without notice and court approval, but the proceeds of such settlement are not to be turned over to Holdings as the Ex Parte motion suggests; rather, under Sections 12.5, 1.2.55, and 4.2.1, they are vested in the Debtor and “shall remain property of the Debtor’s estate, free and clear of any claim by Holdings.” (Plan, section 4.2.1.)

If, on the other hand, the Modineer and Jerz preference claims are **not** “Preference Actions,” and therefore the proceeds of such claims must be surrendered to Holdings under Plan sections 4.2 and 1.2.1, but the Reorganized Debtor’s expedited hearing motion has cited no provision in the confirmed plan that gives the Debtor the right to settle these claims without notice and court approval. Plan section 12.5 does not do so.

The issue of whether the Modineer and Jerz preference claims are or are not “Preference Actions” is itself an issue on which creditors may wish to be heard, even though the settlement amounts proposed are not huge.

In any case, Debtor has not demonstrated grounds to grant any of the relief it requests in the Ex Parte Motion, and so that motion must be denied. The Court notes, however, that while

Debtor must promptly file and serve an appropriate 20-day notice regarding the two settlement motions (Docket ## 1238, 1240), Debtor need only serve that notice on the parties required to be served by the Court's "Order Establishing Special Noticing Procedures," filed December 3, 2007 (Docket # 885). Before doing so, however, Debtor must file an updated Special Service List, because it appears that Debtor has not done so for some time. *See* Order (Docket # 885) at p. 3 ¶ 5; L.B.R. 2002-1(d)(E.D. Mich.)(which requires Debtor to file an updated Special Service List at least every 30 days.)

Accordingly,

IT IS ORDERED that the Ex Parte Motion (Docket No. 1296) is DENIED.

IT IS FURTHER ORDERED that, **no later than October 10, 2008**, Debtor must: (1) file an updated Special Service List; (2) file, and serve on all parties on the updated Special Service List, an appropriate 20-day notice of Debtor's settlement motions (Docket ## 1238, 1240)¹ *and a copy of this Order*; and (3) file a proof of service verifying such service.

¹ The Notice of Deficient Filing filed September 26, 2008 (Docket # 1255) required Debtor to file and serve the notice and proof of service of same within 8 days. This Order has the effect of extending Debtor's time to cure these defects until October 10, 2008.

Signed on October 07, 2008

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge